The Appellant/Accused viz. Arokiasamy, S/o.Selvarayar @ Aseervatham, residing at Mettukuppam Street, Varadarajanpet, Perambalur, who had been released on bail in Order dt. 8.2.2005 in Crl.M.P.494 of 2005 in Crl.A.1401 of 2004 on the file of this Court.

The Appellant/Accused viz. (1) Anthony Joseph, S/o.Selvarayar @ Asservatham,(2) Selvarayar @ Asservatham, S/o.Sebasthian, both are residing at Mettukuppam street, Vardarajanpet, Perambalur were released on bail in order dt. 30.12.2004 in Crl.M.P.No.12202 of 2004 in Crl.A.No.1401 of 2004 on the file of this Court.

In the High Court of Judicature at Madras

Date : 04.11.2006

Coram :

The Hon'ble Mr. Justice R. BALASUBRAMANIAN
and
The Hon'ble Mr. Justice S. TAMILVANAN

Criminal Appeal No: 1401 of 2004

1. Arokkiasamy

2. Anthony Joseph

3. Selvarayar

All residing at
Mettukuppam Street,
Varadarajanpet,
Perambalur. ... Appellants/Accused 1 to 3

-vs-

State,
represented by
Inspector of Police,
Andimadam Police Station,
Perambalur District. ... Respondent/Complainant

.. .. ..

Criminal appeal under Section 374 Cr.P.C. against the judgment

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of the learned Sessions Judge, Perambalur, made in S.C. No: 28 of 2004 on his file dated 24.11.2004 convicting the accused as stated therein.

For appellants : Mr. T. Sudanthiram
For respondent : Mr. C.T. Selvam,
Additional Public Prosecutor.
.. .. ..

J U D G M E N T

(Judgment of the Court was delivered
by R. Balasubramanian, J.)

The appellants in this appeal were tried in S.C. No: 28 of 2004 on the file of Court of Sessions, Perambalur, for offences under Section 342 I.P.C. (A.1 to A.3); Section 302 I.P.C. (A.1 to A.3); Section 326 I.P.C. (A.3) and Section 326 read with 34 (A.1 and A.2). At the end of the trial, the trial Court found A.2 guilty under Section 342 I.P.C.; A.1 guilty under Section 302 I.P.C.; A.2 and A.3 guilty under Section 302 read with 34; A.3 guilty under Section 326 and A.1 and A.2 under Section 326 read with 34 I.P.C. For the capital offence each one stands sentenced to undergo imprisonment for life together with a fine of Rs.1,000/- carrying a default sentence. For the offence under Section 326 I.P.C. each one stands sentenced to undergo three years R.I. together with a fine of Rs.500/- carrying a default sentence. The sentences were directed to run concurrently. Heard Mr.T.Sudanthiram, learned counsel appearing for the appellants and Mr. C.T. Selvam, Additional Public Prosecutor for the State.

2. According to the prosecution, the occurrence took place at 7.00 p.m. on 20.09.2002 while the second accused wrongfully restrained Anthonisamy, since deceased, A.1 fatally stabbed him with suri knife and in the course of the same transaction, A.3 caused grievous hurt to P.W.2 and, therefore, punishable as referred to above. To substantiate their case, the prosecution examined P.Ws. 1 to 13 besides marking exhibits P.1 to P.16 and M.Os. 1 to 6. The defence did not let in any oral evidence but, however, they marked exhibits D.1 to D.4.

3. P.Ws. 1 to 5 are examined as eye witnesses to the occurrence. A.1 and A.2 are the sons of A.3. P.Ws. 1 to 5 are the residents of the same village where A.1 to A.3 are living. A need to construct an overhead water tank arose in the village. Therefore, the villagers were deliberating as to where the overhead water tank could be constructed. This was taken to the notice of the Panchayat President by the villagers. The Panchayat President responded by stating that if any available government land is pointed out, then he would take steps to construct the overhead water tank. It was

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suggested to him that besides Arokianathar Church, i.e. behind the house of A.3 and adjoining his house, certain Government lands in A.3's occupation and certain freehold lands are available and in that land, the overhead water tank can be constructed. In that Panchayat P.Ws. 1 to 4 and the deceased were present. The accused were also there. They objected the location of the site for constructing the overhead water tank stating that there are alternate sites. But, however, the villagers, as a majority, suggested that the site already indicated by them should be the site where the overhead water tank should be constructed. The accused responded by stating that if the project is put through, then it would result in innumerable difficulties and cause hindrance to them. However, the villagers persisted that the project would go on only in that place. Immediately, A.1 commanded A.2 to catch hold of the deceased, who was playing a prominent role in putting through the project; ran to his house; came back with a suri knife and gave a stab injury on the left flank of Anthonisamy, since deceased. A.2 was holding Anthonisamy at that time. P.Ws. 1 and 2 (P.W.1 is the younger brother of the deceased) ran to save him. At that time, A.3 with an iron rod attacked on the right shoulder of P.W.2. The accused picking up the sticks there assaulted the deceased and P.W.2. Then all the accused made good their escape. The occurrence was witnessed by P.Ws. 1 to 5 and others. Both the injured were taken in a car by P.W.1 and others to the Government Hospital at Jayankondam. After giving first aid, the hospital authorities at Jayankondam, referred the injured to the Government Head Quarters Hospital at Tanjore. Both the injured were taken in the same car to the Government Head Quarters Hospital at Tanjore. P.W.9, the duty Doctor in the Government Head Quarters Hospital at Tanjore, by examining Anthonisamy pronounced him dead. P.W.2 was admitted as an inpatient. P.W.1 returned in the same car and went to the investigating police station and narrated the complaint to a person present there. The said person reduced into writing the said narration and read it over to P.W.1. After confirming the contents of the same, P.W.1 signed in it. Ex.P.1 is the said complaint. P.W.1 was examined by the police. M.O.1 is the knife and M.O.2 is the sharp edged iron rod which the accused had while attacking the injured. The occurrence took place at 6.00 p.m. on 20.09.2002.

4. P.W.11 is the Sub Inspector of Police, who was present at Andimadam Police Station at 9.30 a.m. on 21.09.2002 (in the evidence it is wrongly typed as 9.30 a.m. on 20.09.2002). P.W.1 appeared before him and gave a written complaint which he registered as Ex. P.1 in his police station crime No: 365 of 2002 under Sections 342, 324 and 302 I.P.C. Ex.P.8 is the express first information report. He sent the express records to the Court as well as to the higher officials.

5. P.W.13 is the Investigating Officer in this case. He

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received the express records sent to him by P.W.11 and took up the investigation. He went to the crime scene and in the presence of P.W.7 and another, he prepared Ex. P.4, the Observation mahazar and Ex.P.11, the rough sketch. He examined the witnesses by recording their statements. From the crime scene P.W.13 recovered sample earth and blood stained earth under a mahazar attested by the same witnesses. P.W.7 witnessed the preparation of Ex.P.4 the Observation Mahazar and recovery of M.Os. 3 and 4 from the crime scene under Ex.P.5. P.W.13 conducted inquest over the dead body in the Government Headquarters Hospital, Tanjore in the presence of Panchayatdars and witnesses. Ex. P.12 is the inquest report. Then he sent a requisition to the hospital through a police constable for conducting post mortem on the dead body.

6. P.W.10 is the police constable who carried the requisition to the hospital for post mortem. After post mortem, he removed M.Os. 5 and 6 from the dead body and handed over the same to the investigating officer. P.W.12 is the Assistant Professor of Forensic Medicine, in the Government Head Quarters Hospital at Tanjore, who on receipt of the requisition Ex. P.9, commenced post mortem at 3.20 p.m. on 21.09.2002. During post mortem, she found various symptoms as noted by her in Ex.P.10, the post mortem report. The symptoms noted therein are as here under :

" External Injuries :-

1. A vertically oblique sutured stab wound with intact silk sutures noted over the left side lateral chest wall over the 7th inter costal space in the mid axillary line 13 cm. Below the arm pit measuring 4 cm in length x 2 cm breadth x abdominal cavity deep found situated 13 cm below and lateral to left nipple.

Extrimities : Pale. Heart – Normal in size. All the chambers were empty. Valves : Normal. Coronary vessels : patent. Great vessels : Normal. Lungs : c/s. both pale. Larynx and hyoid bone : intact. Stomach : contained about 200 ml of dark brown coloured thick fluid with no specific smell, Mucosa : pale. Liver, spleen, kidneys : c/s. Pale. Small intestine : Empty. Mucosa : Pale – no specific smell made out. Bladder : empty. Pelvis : intact. Bones : intact. Brain : c/s. Very much pale."

2. On removal of the sutures in the above said wound No: 1 and on exploration of the same – the stab wound was found to have entered through 7th intercostal space, entered the abdominal cavity and made corresponding stab wound over the greater omentum, middle of posterior wall of stomach, divided the middle of (N.C) of pancreas, injured the

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mesentery, root of mescentery, stomach bed, great vessels like aorta, mesenteric vessels, inferior venal cava and gastric vessels. Abdomen cavity contained about four litres of fluid blood. Multiple contusions over (Torn) coils of small intestines, Transverse colon, inferior surface of liver, left kidney, mesentery, root of mesentery and over Pancreas. Retroper (N.C) contusion noted over the whole of both sides of abdomen and whole of stomach bed. The direction of the stab wound was found to be anteriorly forwards and medially to the right side. The above mentioned stab injury was found to be antemortem in nature. Since the deceased was brought dead to TMCH casualty on 21.90.2002 at about 1.20 A.M. Death would have occurred before that period which is consistent with the history of the case. Moreover body was found kept in TMCH cold storage from 1.20 A.M on 21.9.2002. However, death would have occurred 12-24 hours prior to post mortem examination.

The Doctor opined that death is due to shock and haemorrhage due to the stab injury to abdomen involving many of the vital visceral organs. According to the Doctor, a weapon like M.O.2 could have caused the injuries found on the dead body.

7. P.W. 13 continued his investigation by examining witnesses and recording their statements. At 5.30 p.m. on 21.09.2002, he arrested A.1 to A.3 in the presence of P.W.7 and another. At that time, A.1 gave a voluntary confession statement, the admissible portion of which is Ex.P.2. Pursuant to P.2, M.Os. 1 and 2 came to be recovered under a mahazar, Ex. P.3 attested by the same witnesses. P.W.13 came back to the police station along with the arrested accused and the incriminating objects. The accused were sent for judicial remand. The incriminating objects were sent to Court with a requisition Ex. P.13 to subject the same for chemical examination. As an enclosure to Court's letter Ex. P.14, the case properties were sent to the laboratory. Ex. P.15 is the serologists report and Ex.P.16 is the biology report. P.W. 13 examined further witnesses by recording their statements.

8. The evidence of P.Ws. 2 to 5 on the occurrence proper and the circumstances preceding the attack is more or less on the same lines as spoken to by P.W.1. P.W.6 is the wife of the deceased. Her evidence is that after hearing a commotion near the temple in question she ran towards that place followed by other persons. At that time, she heard A.1 stating that for all the problems, the deceased is the route cause and, therefore, he must be cut. Accordingly, A.2 caught hold of her husband, A.1 with a knife stabbed her husband and he fell down. P.Ws. 1 and 2 ran to save her husband. A.3 stabbed on P.W.2's back. Then the accused made good their escape. At that time when her husband was attacked, the Panchayat

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President and 20 more persons were there. Her husband and P.W. 2 were taken to the hospital. She and her children were crying in the house. She came to know that her husband died in the hospital. M.Os. 1 and 2 are the weapons used by the accused for committing the crime.

9. P.W.8 is working as a driver under the President of the Panchayat. He was driving his ambassador car. In that car, the deceased as well as P.W.2 and P.W.1 with two women travelled to the Government Hospital, Jayankondam. In the hospital a letter was given and with that letter, they went to the Government Headquarters Hospital, Tanjore, where, on examination by the Doctors, Anthonisamy was pronounced dead. P.W.2 was admitted in the hospital. P.W.1 proceeded to give a complaint to the police. P.W.8 went to his house in that car.

10. P.W.9 is the Casualty Medical Officer in the Government Hospital at Jayakondam. At 8.55 p.m. on 20.09.2002, P.W.2 was brought before him for treatment for injuries shown to have been sustained by him at 6.00 p.m. on that day at the hands of three known persons inside the house of one Selvarayar (A.3 is Selvarayar). On him, he found the symptoms as noted by him under Ex.P.6, the Accident Register. Injury No:1 is a grievous injury. The symptoms noted by him are as here under :

" 1) A cut deep wound of 3 cm x 2 cm x 1 cm on the Right side back over the Scapula.

2) Sub-cutaneous Emphyseme on the Right Hemothroax on the back side.

3) Difficulty in breathing."

P.W.9 also examined Anthonisamy, since deceased, at 8.50 p.m. on 20.09.2002 for injuries shown to have been sustained by him at 6.00p.m. on that day at the hands of three known persons inside the house of one Selvarayar. On him he found various symptoms as noted by him in Ex.P.7, the accident register. The symptoms are as here under :

" Alleged to have been assaulted by three known persons on 20.9.02 of 6.00 P.M. at Varatharajan Pettai, Mettukuppam at selvarayar house by கத்தி, சுலுக்கி, கட்டை .

Nature of injury and treatment :

1. A cut lacerated wound on the lateral side of Left side chest of 3 cm x 2 cm x 1 cm.

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2. Patient C/o Dysponic and abdomen pain.

3. C/o. Difficulty in passing Urine and distension of Abdomen."

P.W.9 at 00.55 a.m. on 21.09.2002, i.e. on the intervening night of 20.09.2002 and 21.09.2002, examined A.1 for injuries show to have been sustained by him at 8.00 p.m. on 20.09.2002 at the hands of 22 known persons in his house by the use of knife and stick. On him, he found various symptoms as noted by him in Ex.D.1, the accident Register. The symptoms are as here under:

" 1) A cut lacerated wound of the Right side head 2 cm x 1 cm x 0.5 cm.

2) C/o Pain Swollen on the Right upper limb 6 cm x 3 cm

3) Abrasion on the Right thigh.

4) Abrasion on the Left side back.

5) Abrasion 1 cm x 1 cm just above the Left ankle Joint.

6) Pain and Swelling on the Left side chest 7 cm x 2 cm x 0.5 cm.

7) Abrasion on the back.

8) Pain all over the body."

The injuries are simple in nature. At the same time, he examined A.2 also for injuries shown to have been sustained by him at 8.00p.m. on 20.09.2002 at the hands of known persons. On him he found the symptoms as noted by him in Ex.D.2. The symptoms are as here under :

" 1) A cut lacerated wound of 3 cm x 2 cm x 0.5 cm on the Right side head.

2) Pain and swelling on the left lower limbs.

3) Pain and swelling on the Right side chest.

4) Abrasion on the Right superacalvicular Region.

5) Pain all over the body."

The injuries are simple in nature. P.W.9 also examined A.3 for injuries shown to have been sustained by him at 8.00 p.m. on

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20.09.2002 by 22 known persons, in his house, by the use of knife and stick. On him, he found various symptoms as noted by him in Ex.D.3, the accident register. The symptoms are as here under :

" 1) C/o. Pain and swelling on the left upper limb.
2) Multiple abrasion with bleeding from abdomen.
3) Pain and giddiness on the head.
4) Pain all over the body."

The injuries are simple in nature. P.W.9 also examined Kolanthai Therasa, wife of A.3 at 01.10 a.m. on 21.09.2002 for injuries shown to have been sustained by her at 8.00 p.m. on 20.09.2002 at the hands of 22 known persons in her house. On her, he found various symptoms as noted by him in Ex.D.4, the accident register. The symptoms are as here under :

" 1) A linear cut injury on the Right side skull 2 cm x 5 cm.
2) Pain and swelling on the Left upper limbs.
3) Pain all over the body."

The injuries are simple in nature.

11. P.W. 13 examined further witnesses on 22.09.2002 by recording their statements. P.W.13 was succeeded by another Inspector of Police, who, after completing the investigation and after complying with all the other legal formalities, filed a final report against the accused.

12. When the accused were questioned under Section 313 of Cr.P.C. on the basis of the incriminating materials made available against them, they denied each and every circumstance put up against them as false and contrary to facts. As noted earlier except marking exhibits D.1 to D.4, they have not let in any oral evidence.

13. Mr. T. Sudantiram, learned counsel appearing for the appellants argued that not only there is an inordinate delay in lodging the complaint but there is also an inordinate delay in sending the material records to the Court. Admittedly, the witnesses and the injured have to pass through the investigating police station to reach the Government hospital at Jayankondam. But, none of the witnesses or persons who are shown to have been present at the crime scene have chosen to give a complaint at the police station till 9.30 a.m. on 21.09.2002. P.W.2 and Anthonisamy, since deceased, were first taken to the hospital at Jayankondam from where both of them were referred to the Government Headquarters Hospital at Tanjore. In the Government Headquarters Hospital at Tanjore one of the injured namely Anthonisamy died at 01.30 hours on the morning of 21.09.2002. Atleast immediately, thereafter, a complaint ought to have been

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lodged with the police. But that has not been done. Though P.W.1 would state in his evidence that he returned in the very same car from the Government Headquarters Hospital at Tanjore to the police station, yet the fact remains established that P.W.1 had given the complaint only at 9.30 a.m. on 21.09.2002. P.W.1 had not written the complaint. On the other hand, he got it written by a scribe. The scribe had not been examined. In Ex.P.13, the letter sent by the investigating officer to the Court for subjecting the case properties for Chemical Examination, it is stated that at 7.00 p.m. on 20.09.2002, the prosecution party and the accused were involved in exchange of words leading to each party assaulting the other. Therefore, this version must be the true version. But that version had not been reflected in the evidence brought before Court by the prosecution and not even in Ex.P.1. Therefore, the argument is that Ex.P.1 is a fabricated version brought into existence after much deliberation. There is enough motive for the prosecution party to give a false complaint against the accused. Besides the accused, A.3's wife also had sustained injury. None of the prosecution witnesses admit any knowledge about the injuries found on A.1 to A.3 and wife of A.3. In Ex.P.13 there is a disclosure that there was a quarrel and in that context, the non explanation of the injuries found on A.1 to A.3 and A.3's wife assumes considerable importance in this case. We heard the learned Additional Public Prosecutor on the above points.

14. Let us consider the merits of the submissions made by the learned counsel on either side. We are fully aware, as held by the Supreme Court, that non explanation of the injuries found on the person of the accused would not vitiate the prosecution case as a matter of routine. On the other hand, how far non explanation of the injuries found on the accused would vitiate the prosecution case would depend upon the facts available in each case. It would also vary from case to case. In this case, A.1 to A.3 have sustained injuries. Ofcourse, they have been examined two or three hours after P.W.2 and Anthonisamy, since deceased, were examined by P.W.9. P.W.9 is the Doctor in the Government Hospital at Jayankondam, before whom A.1 to A.3 appeared for treatment for the injuries sustained by them on the same night. P.W.9 had also admitted in his evidence that A.3's wife was also examined by him. Exs. D.1 to D.4 are the accident registers in respect of A.1 to A.3 and A.3's wife. P.W.13, the investigating officer had categorically admitted that he had not investigated the case from the angle of the accused suffering injuries. All the witnesses in this case had turned a total blind eye when questioned on the injuries found on the accused. Therefore, with the caution in our mind, namely, non explanation of the injuries found on the accused would not vitiate any prosecution case as a matter of routine, we proceed to analyse the evidence available on record. It is no doubt true that among a number of eye witnesses, P.W.2 is an injured eye witness. It has been held by the Supreme

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Court in the judgment reported in 1980 S.C.C. (Cri.) 985 (Marundanal Augusti vs. State of Kerala) that if a complaint lodged before the police is found to be a concocted / fabricated version, then there is no surprise that eye witnesses are examined to suit to that fabricated version. Following that judgment, this Court (both of us are parties) while sitting in the Madurai Bench of the Madras High Court in the judgment dated 03.03.2006 in Criminal Appeal No: 635 of 1999 held that though there may be a number of eye witnesses to the occurrence, if the complaint to the police is found to be a fabricated version then, no credibility would be attached to the evidence of the eye witnesses. Having the above proposition in our mind, when we examined the evidence of P.Ws. 1 to 5, we find it very difficult to accept their evidence, at their face value, for the following reasons.

15. According to the charge, the occurrence took place at 7.00p.m. on 20.09.2002. Even in Exs. P.6 and P.7, the accident registers in respect of P.W.2 and Anothonisamy, while he was alive, it is found noted that the occurrence had taken place in A.3's house. P.W.9, the Doctor, who examined A.1 to A.3 and A.3's wife had stated in his evidence that A.3 and his wife had told him that they had come to receive the injuries while they were in their house. Likewise, is the statement of A.1 who had also stated that he came to receive the injuries in A.3's house. Admittedly, even according to the prosecution, the occurrence was just near the house of accused. A.1 and A.2 are the sons of A.3. We have also referred to the other sequence of events which took place prior to the attack.

16. Leaving aside for the present as to how the occurrence took place, we applied our mind to the materials available on record to find out whether the complaint had come to be given without any waste of time and whether the complaint so given had been sent by the police officer to the Court at the earliest point of time. It is not as though at the occurrence site P.W.2, P.W.1 and Anthonisamy, since deceased, were alone there. P.W.6 is the wife of the deceased. She would state that at the occurrence site, besides the Panchayat President, 20 other persons were there. The evidence of P.Ws. 1 to 5 would also show that a number of persons were present at the crime scene. The occurrence is shown to have taken place when the villagers insisted that the overhead water tank should be constructed in the land appurtenant to the house of the accused. Therefore, it is clear that innumberable persons were available at the crime scene. P.W.1's evidence is that after the occurrence, he transported P.W.2 and the other injured in a car to the Government Hospital at Jayankondam. In more than one place, he had admitted that one has to pass through the investigating police station at Andimadam to reach Jayankondam. Andimadam is at a distance of 7 kms. from the crime scene and Jayankondam is at a distance of 20 kms. from the crime scene. Therefore, one has to travel 13 kms. from Andimadam to reach

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the hospital at Jayankondam. It may be true that P.W.1 might have been very anxious to get treatment for P.W.2 and the other injured at the earliest point of time and, therefore, he would not have been willing to waste time by going to the police station to lodge the complaint and then go to the hospital. Even assuming for a minute that P.W.1 did not think it fit to give a complaint when he was transporting both the injured to the hospital, we still wonder as to why he did not choose to give a complaint atleast immediately after Anthonisamy was pronounced dead in the Government Headquarters Hospital at Tanjore at 01.30 hours in the morning of 21.09.2002. P.W.1's evidence shows that he had a car at his disposal and he returned in the same car to give a complaint at the police station. P.W.8, the driver of the car did not support this version of P.W.1. But, the fact remains that the complaint came to be lodged only at 9.30 a.m. on 21.09.2002. Absolutely, there is no explanation as to why P.W.1 did not lodge a complaint in the police station immediately or within a reasonable time after the occurrence or atleast immediately after Anthonisamy was pronounced dead in the Government Headquarters Hospital at Tanjore. We have noted earlier that besides P.Ws.1, 2 and the deceased there were a number of other people at the crime scene. It is not as though the occurrence had taken place at the dead of the night. The occurrence, even according to the prosecution, had taken place at about 7.00 p.m. There is no evidence that there was no transport facility at all from the crime scene to go to the police station at that time. Under these circumstances, even assuming that P.W.1 was justified in taking P.W.2 and the other injured to the hospital directly, we see no reason at all as to why none available at the crime scene went to the police station to give a complaint. Therefore, there is an inordinate unexplained delay in giving the complaint to the police. It must be noticed that while P.W.1 was returning from the Government Headquarters Hospital at Tanjore, he has to necessarily pass through Jayankondam, where the local hospital is situated, and Andimadam, where the police station is situated, before he reaches his house. Therefore, the unexplained delay in lodging the complaint to the police raises a serious doubt in our mind as to the whether the present version of the prosecution is a true one ?

17. Our doubt gets strengthened, as we have already noted, from the contents of Ex.P.13, the requisition sent by the investigating officer to the Court to subject the case properties for chemical examination, wherein it is stated that there was exchange of words between the two groups regarding the construction of the overhead water tank resulting in exchange of blows between the two groups. P.W.11 is the Sub Inspector of Police before whom at 9.30 a.m. on 21.09.2002, P.W.1 appeared and gave a written complaint. Exs. P.1 and P.8, as could be seen from the endorsement made by the Magistrate, had reached the Magistrate only at 11.00a.m. on 22.09.2002. 20.09.2002 is a Friday. 21.09.2002 is a Saturday and

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22.09.2002 is a Sunday. The learned Magistrate had received Ex.P.8 only at his residence. The Court's seal bears the date as 23.09.2002, namely the following first working day. P.W.11 had admitted in his evidence in cross that Jayankondam, where the Court is situated, is at a distance of 14 kms. from the investigating police station and there are plenty of transport facilities. He is also categoric that from Andimadam, where the investigating police station is situated, one can reach the Court at Jayankondam within one hour for the purpose of handing over the material records. In this case, as noted earlier, there is a delay of more than 24 hours in sending the express records to the Magistrate. This Court, right from the judgment reported in 1974 Law Weekly Criminal 190 (Karunakaran Jabamani Nadar, In re.) emphasised the need to send all the material records in a case of murder to the Court without any delay so as to avoid any possible criticism. It is needless to state that the complaint is the launching pad for the prosecution. Therefore, the police officer is under a legal compulsion to send the express records to the Court at the earliest possible time. In this case, the express records had reached the Court 24 hours after it was registered in the police station. P.W.11's evidence is that immediately after registering the complaint at 9.30a.m., he handed over the records to the station writer for their onward journey to the Court. The station writer had not been examined. The person who carried the F.I.R. to the Court had not been examined. Therefore, there is not only delay in giving the complaint to the police, but there is also delay in sending the material records to the Court which delay remains unexplained.

18. In the light of such inordinate delay committed at both stages and in the context of the non explanation of the injuries found on A.1 to A.3 and A.3's wife, we see no reason at all as to why we should not disbelieve the prosecution case projected by them now as a fabricated version. The fact remains that an incident had taken place in which P.W.2 came to be grievously hurt and another person was done to death. That A.1 to A.3 and A.3's wife should have also sustained the injuries in the same course of transaction cannot be totally ruled out in view of the contents of Ex.P.13 which is the request sent by the investigation officer to the Court. Therefore, having a overall view of the materials together we find that there should have been a free fight in an incident that took place on the night of 20.09.2002 over the dispute as to where exactly the overhead water tank should be constructed, namely whether just adjacent to the house of the accused or else where and only in that the prosecution party and the accused would have come to sustain the injuries. The materials noted by us also show that the prosecution party may be the aggressors since evidence has come on record that inside the house of A.3 the accused had come to receive the injuries. The land suggested for construction of the overhead water tank is in close proximity to the house of the accused. P.W.3 in his evidence did not

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even say that A.2 caught hold of Anthonisamy thereby facilitating A.1 to fatally stab him. P.W.1 admitted that the house of the accused is situated within a distance of 4 mtrs. from the temple. P.W.4 had admitted that from the crime scene it hardly takes one second to go to the house of the accused and come back. Therefore, from the materials available on record it is not possible for us to remove the suspicion from our mind that the prosecution case appears to be a fabricated version. The prosecution party appears to be the aggressors and during such aggression, not only the accused and A.3's wife, but also the prosecution party came to sustain the injuries. When we doubt the very origin of the prosecution case, then there is no point in saying that there are eye witnesses to the crime. In such cases, it is always possible to create a tailor made situation to suit to the prosecution case.

19. For all the reasons stated above, we find that the prosecution's case is not free from suspicion and accordingly, giving the benefit of our discussions as referred to above to the accused, we are inclined to set aside the judgment under challenge and acquit all the accused. Accordingly, the appeal is allowed and all the appellants / accused are acquitted of the various offences for which they were charged, tried and convicted. Fine amount, if any, paid by any of the accused would be refunded to them. Bail bond, if any, executed by them shall stand terminated forthwith.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gp

Copy to :

1. The Principal Sessions Judge
   Perambalur.

2. The Judicial Magistrate,
   Jayamkondam.

3. -do- through The Chief Judicial Magistrate,
   Perambalur.

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4. The District Collector,
Perambalur.

5. The Director General of Police,
Chennai.

6. The Public Prosecutor,
High Court, Madras.

7. The Superintendent of Police,
Central Prison,
Trichirappalli.

8. The Inspector of Police,
Andimadam Police Station,
Perambalur District.

+1cc to Mr.T.Sudanthiram,Advocate Sr 52862

JSK (CO)
km/23.11.

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1401 of 2004

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